

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

DAVID D. MELTON,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 3:13-cv-01989-JE

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

Michael H. Simon, District Judge.

United States Magistrate Judge John Jelderks issued Findings and Recommendation in this case on October 29, 2015. Dkt. 27. Judge Jelderks recommended that the Commissioner's decision be reversed and this action be remanded for further proceedings. Judge Jelderks further recommended that upon remand, the Administrative Law Judge hold a new hearing and call upon a medical expert to assist in determining Melton's disability onset date, reevaluate Melton's RFC and the application of Social Security Listing 11.18 to Melton's impairment for the period prior to September 24, 2009, and conduct any additional proceedings as required by conclusions derived from following these instructions. No party has filed objections.

Under the Federal Magistrates Act (“Act”), the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Jelderks’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Jelderks’s Findings and Recommendation, Dkt. 27. The Commissioner’s decision is **REVERSED** and this case is **REMANDED** for further proceedings. Upon remand, the Administrative Law Judge must hold a new hearing and call upon a medical expert to assist in determining Melton’s disability onset date, reevaluate Melton’s RFC and the application of Social Security Listing 11.18 to

Melton's impairment for the period prior to September 24, 2009, and conduct any additional proceedings as required by conclusions derived from following these instructions.

IT IS SO ORDERED.

DATED this 25th day of November, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge